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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,094	02/02/2004	Mark S. Akselrod	LAND-0006-1	5754
22506	7590	01/19/2006	EXAMINER	
JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030			VU, MINDY D	
			ART UNIT	PAPER NUMBER
			2884	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/768,094	Applicant(s) AKSELROD ET AL.	
	Examiner Mindy Vu	Art Unit 2884	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 9-13, 17, 19, 21-23, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 2-8, 14-16, 18, 20 and 24-26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/7/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

This Office Action is in response to the Applicant's application filed February 2, 2004.

Information Disclosure Statement

Applicant cited U.S. Patent 6,278,679 twice. The one with the wrong inventor's name has a line drawn through it.

U.S. Patent 5,028,794 has a line drawn through it since it was withdrawn.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 5 discloses " light source has a wavelength in the range between 300 to 370 nm."

Claim 7 discloses " light source has a wavelength in the range between 550 to 700 nm."

Claim 9 discloses " at least one oxygen vacancy defect comprises at least one color center having absorption bands in the region of 335 ± 5 nm and 620 ± 10 nm, an emission in the region of 750 ± 5 nm and a 75 ± 10 ns fluorescence lifetime.

Claim 10 discloses " fluorescent light has a wavelength in the range between 450 and 600 nm and centered at 520 ± 10 nm."

Claim 11 discloses " light source has a wavelength in the range between 370 to 490 nm."

Claim 13 discloses " at least one oxygen vacancy defect comprises at least one color center having an absorption in the region of 435 ± 5 nm, an emission in the region of 520 ± 5 nm."

Claim 18 discloses " light has a wavelength in the range between 290 and 380 nm."

Claim 20 discloses " light has a wavelength in the range between 550 and 700 nm."

Claim 27 discloses " a fluorescence lifetime of 75 ± 10 ns."

The examiner is unable to find anywhere in the Specification these specific ranges or conditions that underlined above.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 9-13, 17, 19, 21-23, 27 and 28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5-8, 22-26, 31 and 32 of copending Application No. 10/633,654. Although the conflicting claims are not identical, they are not patentably distinct from each other because the methods of the present application are anticipated or made obvious by the steps since data storage and erasure is an applied and erased dose and the same luminescent material is recited in the above identified copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 2-8, 14-16, 18, 20 and 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Miller et al. (5,136,163) discloses a method for detecting radiation dose by: exposing a crystalline material Al_2O_3 and incorporating carbon in the material to ionizing radiation; exposing the material to UV light and detecting fluorescent light emitted by excited luminescent material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mindy Vu whose telephone number is 571-272-8539. The examiner can normally be reached on M-F 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on 571-272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mv



DAVID PORTA
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